

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Barnsboro and Gallitzin,
Pennsylvania)

MB Docket No. 05-103
RM-11205

NOTICE OF PROPOSED RULE MAKING

Adopted: March 16, 2005

Released: March 18, 2005

Comment Date: May 9, 2005

Reply Date: May 24, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it for consideration a Petition for Rule Making filed by Vernal Enterprises, Inc. ("Vernal"), licensee of Station WHPA(FM), Channel 228A, Barnsboro, Pennsylvania. Pursuant to Sections 1.420(g) and (i) of the Commission's rules,¹ Vernal proposes to change the community of license for Station WHPA(FM) from Barnsboro to Gallitzin, Pennsylvania. Vernal represents that the proposed allotment of Channel 228A at Gallitzin is mutually exclusive with the current allotment of Channel 228A at Barnsboro. Vernal states that the proposal would not remove the sole local service from Barnsboro, which would continue to be served by Station WNCC(AM), Barnsboro, Pennsylvania. In addition, Vernal states that Barnsboro no longer exists as a separate legal entity because, on January 1, 2000, Barnsboro and Spangler, Pennsylvania, were consolidated into a new entity known as the Borough of Northern Cambria.

2. Vernal states that Gallitzin is an incorporated community of 1,756 persons with an elected borough council and mayor. Vernal further states that the borough of Gallitzin supports its own police force, fire department, public library, and middle school. Gallitzin has its own post office and zip code (16641).

3. *Modification of FM and TV Authorizations to Specify a New Community of License*² establishes that, in evaluating a change of community proposal, we compare the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³ Under those priorities, the existing allotment of Channel 228A at Barnsboro

¹ 47 C.F.R. §§ 1.420(g) and (i).

² 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

³ 90 FCC2d 88, 91-92 (1982). The FM allotment priorities are the following: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Equal weight is given to priorities (2) and (3).

would, at best, satisfy priority four, "other public interest matters."⁴ The proposed reallocation of Channel 228A at Gallitzin should, therefore, be preferred, because it would satisfy priority three, "first local service." Both Barnsboro and Gallitzin are well-served with five or more aural broadcast transmission services.

4. Neither Barnsboro nor Gallitzin is located within an urbanized area, and although the proposed change in community will cause Station WHPA(FM) to place a 70 dBu signal contour over a small portion of the Altoona Urbanized Area, that coverage will be much less than 50 percent. Under the circumstances, we tentatively conclude that no *Tuck* analysis is necessary.⁵

5. The proposed allotment at Gallitzin could be made with the site restrictions and reference coordinates indicated below. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. Section 73.202(b), with respect to Barnsboro and Gallitzin, Pennsylvania:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Barnsboro, Pennsylvania	228A	---
Gallitzin, Pennsylvania	---	228A

Proposed Coordinates for Channel 228A at Gallitzin, Pennsylvania: 40-36-31 NL and 78-36-21 WL, at a site 14.8 km (9.2 miles) north of Gallitzin.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the *Appendix* before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules,⁶ interested parties may file comments on or before May 9, 2005, and reply comments on or before May 24, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of any filing should be served on counsel for Vernal, as follows:

⁴ Vernal represents that there are currently three radio stations licensed to Northern Cambria, which, combined with Station WNCC(AM) at Barnsboro, gives a total of four local stations at the newly consolidated community of Northern Cambria.

⁵ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ See 47 C.F.R. §§1.415 and 1.419.

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8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Pennsylvania Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to the Office of the Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.⁸

10. For further information concerning any of these proceedings, contact Deborah A. Dupont, Media Bureau, at (202)418-7072. For purposes of these restricted notice and comment rule making proceedings, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement.

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

⁸ See 44 U.S.C. 3506(c)(4).

Any comment which has not been served on the Petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the Vernal. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.